

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

VINCENT BAKER, ) CIV-S-05-0589 GEB KJM  
 )  
Plaintiff, ) ORDER  
 )  
v. )  
 )  
STATE OF CALIFORNIA, et al., )  
 )  
Defendants. )  
\_\_\_\_\_ )

Defendants State of California ("State"), California Youth Authority ("CYA"), Roderick Hickman ("Hickman"), Tim Mahoney ("Mahoney"), and Walter Allen, III ("Allen") move to dismiss Plaintiff's complaint under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim. Plaintiff opposes the motion.

BACKGROUND

Plaintiff is a former ward of a CYA correctional facility. (Compl. ¶ 1.) On January 20, 2004, CYA employees allegedly "attempted to require and force [Plaintiff] to sign a 'contract' admitting he was a gang member and agreeing to desegregate [and] integrate the blocks without violence." (Id. ¶ 7.) Plaintiff alleges he "refused to sign said 'contract' whereupon he was attacked and beaten by guards. . . ." (Id.) At the relevant time, Defendants Hickman, Mahoney, and Allen

(collectively, "Supervisory Defendants") "were State employees, supervisors, and/or officials." (Id. ¶ 12.)

Plaintiff brought suit against the Supervisory Defendants for assault and battery (first claim) and negligent supervision, hiring, training, employee discipline, and operation of a correctional facility (second claim); and against the Supervisory Defendants, the State, and the CYA for fraud and concealment (third claim); conspiracy (fourth claim); violation of Plaintiff's constitutional rights pursuant to 42 U.S.C. § 1983 (fifth claim); violation of California Civil Code section 52.1 (sixth claim); negligence per se (seventh claim); failure to summon medical care under California Government Code section 845.6 (eighth claim); and violation of California Civil Code section 51.7 (ninth claim).

#### DISCUSSION

Defendants move to dismiss all of Plaintiff's claims. "On a motion to dismiss under Rule 12(b)(6), "[a]ll factual allegations set forth in the complaint 'are taken as true and construed in the light most favorable to [P]laintiff . . . .'" Lee v. City of Los Angeles, 250 F.3d 668, 679 (9th Cir. 2001) (quoting Epstein v. Wash. Energy Co., 83 F.3d 1136, 1140 (9th Cir. 1996)).

##### A. The State and the CYA

The State and the CYA move for dismissal of Plaintiff's fifth claim which alleges claims under 42 U.S.C. § 1983 ("§ 1983"), arguing that "states and state agencies are not defined as 'persons' for purposes of § 1983 . . . and, therefore, are not subject to suit under § 1983." (Defs.' Mot. to Dismiss at 10.) Since only "persons" are liable under § 1983 and "a State is not a 'person' within the meaning of § 1983," the State and the CYA's motion to dismiss

1 Plaintiff's fifth claim is granted. Will v. Mich. Dep't of State  
2 Police, 491 U.S. 58, 65 (1989).

3         The State and the CYA also argue they are immune from  
4 liability on Plaintiff's state claims. (Defs.' Mot. to Dismiss at 2.)  
5 California Government Code section 844.6 provides that "a public  
6 entity is not liable for . . . [a]n injury to any prisoner." Cal.  
7 Gov't Code § 844.6(a)(2). "[A] ward . . . at a juvenile correction  
8 center . . . [is] a 'prisoner' within the meaning of the relevant  
9 immunity provisions of the Government Code." May v. County of  
10 Monterey, 139 Cal. App. 3d 717, 719 (1983). Since the State and the  
11 CYA, as public entities, are immune from suit on Plaintiff's state  
12 personal injury claims, the State and the CYA's motion to dismiss  
13 Plaintiff's third, fourth, sixth, seventh, and ninth claims is  
14 granted.

15         However, Plaintiff's eighth claim alleges the State and the  
16 CYA are liable under California Government Code section 845.6 which  
17 provides: "a public employee, and the public entity where the employee  
18 is acting within the scope of his employment, is liable [for injury  
19 proximately caused by the failure of the employee to furnish or obtain  
20 medical care for a prisoner in his custody] if the employee knows or  
21 has reason to know that the prisoner is in need of immediate medical  
22 care and he fails to take reasonable action to summon such medical  
23 care." The State and the CYA argue that Plaintiff's eighth claim  
24 should be dismissed because "there is nothing other than vague and  
25 conclusory allegations that any of the [S]upervisory Defendants knew  
26 of or had reason to know that Plaintiff required immediate care [and]  
27 the Complaint fails to allege with any specificity that the injuries  
28 were serious . . . ." (Defs.' Mot. to Dismiss at 14.)

1 Plaintiff alleges Defendants "knew or had reason to know  
2 that [Plaintiff] was in need of immediate medical care. Despite such  
3 knowledge, [Defendants] failed to take reasonable action to summon  
4 such medical care for [P]laintiff." (Compl. ¶ 41.) The State and the  
5 CYA counter that these allegations are insufficient because they are  
6 "vague and conclusory" and because "the Complaint fails to allege with  
7 any specificity that the injuries were serious." (Defs.' Mot. to  
8 Dismiss at 14.) However, Plaintiff's allegations that Defendants  
9 "assaulted and battered [him,] repeatedly striking him . . . kicking  
10 him . . . 'spraying' him with chemical agents . . . [and performing]  
11 knee drops to the back of [P]laintiff's head" are sufficient to  
12 support the inference that Defendants knew or had reason to know that  
13 Plaintiff suffered serious injuries requiring immediate medical care.  
14 (Compl. ¶ 8.) Therefore, the State and the CYA's motion to dismiss  
15 Plaintiff's eighth claim is denied.

## 16 B. The Supervisory Defendants

### 17 1. Assault and Battery

18 The Supervisory Defendants move to dismiss Plaintiff's first  
19 claim for assault and battery, arguing that "Plaintiff has not alleged  
20 that any of these [Supervisory] Defendants intended to cause harmful  
21 or offensive contact . . . as required under California law." (Defs.'  
22 Mot. to Dismiss at 3.) However, Plaintiff alleges that several CYA  
23 employees "intentionally assaulted and battered [him] and/or watched  
24 him be [subjected to] the use of unreasonable and excessive force,  
25 including repeated[] strik[es to] his face and body . . . even though  
26 [P]laintiff was not resisting the guards," and as a result,  
27 "[P]laintiff suffered severe and permanent injuries . . . ." (Compl.  
28 ¶¶ 10, 12, 14.) Plaintiff contends the Supervisory Defendants are

1 liable since they allegedly "approved or ratified said above conduct  
 2 by allowing a custom or practice and maintaining a policy which  
 3 accepts or directs said conduct" (*id.* ¶ 12) and "an employer who  
 4 ratifies conduct is liable therefor" (Pl.'s Opp'n to Mot. Dismiss at 2  
 5 (emphasis added)). However, Plaintiff alleges that the Supervisory  
 6 Defendants are "state employees, supervisors and/or officials."  
 7 (Compl. ¶ 12 (emphasis added).) Since Plaintiff has not alleged that  
 8 the Supervisory Defendants assaulted or battered him, this portion of  
 9 the motion is granted.

10 2. Negligent Supervision, Hiring, Training, Employee  
 11 Discipline, and Operation of a Correctional Facility

12 The Supervisory Defendants also move to dismiss Plaintiff's  
 13 second claim for negligent supervision, hiring, training, employee  
 14 discipline, and operation of a correctional facility "because that  
 15 [claim] may be asserted only against an employer." (Defs.' Mot. to  
 16 Dismiss at 4.) However, "[A supervisory] public officer [could be]  
 17 responsible for the acts or omissions of subordinates [where the  
 18 supervisor] has directed such acts to be done, or has personally co-  
 19 operated therein . . . ." Payne v. Bennion, 178 Cal. App. 2d 595,  
 20 598-99 (1960) (emphasis added) (quoting Michel v. Smith, 188 Cal. 199  
 21 (1922)). "There is no rule prohibiting a suit against a [state]  
 22 officer or employee by one injured as a result of the negligence of  
 23 such officer or employee arising in connection with performance of the  
 24 duties of his employment." Collenburg v. County of Los Angeles, 150  
 25 Cal. App. 2d 795, 803 (1957). "Supervisory liability [can be] imposed  
 26 against a supervisory official in his individual capacity for his own  
 27 culpable action or inaction in the training, supervision, or control  
 28 of his subordinates, for his acquiescence in the constitutional

1 deprivations of which the complaint is made, or for conduct that  
2 showed a reckless or callous indifference to the rights of others.”  
3 Larez v. City of Los Angeles, 946 F.2d 630, 646 (9th Cir. 1991)  
4 (internal citations and quotation marks omitted).

5 Plaintiff alleges that the Supervisory Defendants “were  
6 aware that employees . . . had abused wards and/or had a history of  
7 violence or use of excessive force” and that the Supervisory  
8 Defendants “intentionally, knowingly, and/or negligently hired, and  
9 failed to supervise, train, discipline and address and prevent the  
10 wrongful abuse of Wards and thereby authorized and approved the use of  
11 unreasonable and excessive force . . . [on Plaintiff].” (Compl. ¶¶  
12 17, 18.) Since Plaintiff has adequately stated a claim against the  
13 Supervisory Defendants for negligent supervision and training, the  
14 Supervisory Defendants’ motion to dismiss that portion of Plaintiff’s  
15 claim is denied. However, since Plaintiff has not stated a claim  
16 against the Supervisory Defendants for negligent hiring, employee  
17 discipline, and operation of a correctional facility, that portion of  
18 the Supervisory Defendants’ motion is granted.

### 19 3. Fraud and Concealment

20 Defendants seek dismissal of Plaintiff’s third claim for  
21 fraud and concealment, arguing that Plaintiff’s allegations are  
22 “nothing more than conclusory statements.” (Defs.’ Mot. to Dismiss at  
23 8.) Plaintiff alleges that “After the incident, [Defendants] filed  
24 false written reports concerning the incident” and “made false  
25 statements, distortions, misrepresentations, and concealed facts  
26 concerning the events leading up to and including those occurring on  
27 January 20, 2004.” (Compl. ¶ 21.)  
28

1 Plaintiff must "identify the circumstances of the fraud such  
2 that the [D]efendant[s] can prepare an adequate answer from the  
3 allegations." In re MDC Holdings Sec. Litig., 754 F. Supp. 785, 794  
4 (S.D. Cal. 1990) (citing Wool v. Tandem Computers, Inc., 818 F.2d  
5 1433, 1439 (9th Cir. 1987)). Plaintiff's allegations have sufficient  
6 specificity; therefore, this portion of the motion is denied.

#### 7 4. Conspiracy

8 The Supervisory Defendants seek dismissal of Plaintiff's  
9 claim for conspiracy, arguing that "[e]ven if Plaintiff could bring a  
10 claim against [the Supervisory Defendants] for civil conspiracy,  
11 Plaintiff has failed to allege any of [the] elements." (Defs.' Mot to  
12 Dismiss at 9.) "In order to state a [conspiracy claim], a complaint  
13 must allege '(1) the formation and operation of the conspiracy; (2)  
14 the wrongful act or acts done pursuant thereto; and (3) the damage  
15 resulting.'" Duncan v. Stuetzle, 76 F.3d 1480, 1490 (9th Cir. 1996)  
16 (quoting Unruh v. Truck Ins. Exch., 7 Cal. 3d 616, 631 (1972)).  
17 Plaintiff has alleged that "[on] or about January 20, 2004  
18 [Defendants] knowingly and willfully agreed and conspired among  
19 themselves to assault and batter [Plaintiff]" and "furthered said  
20 conspiracy by lending aid and encouragement to each other to commit  
21 and continue said assault and battery." (Compl. ¶¶ 24, 25.)  
22 Plaintiff also alleges that Defendants "engaged in a conspiracy to  
23 deny plaintiff any medical attention . . . for the injuries and harm  
24 he suffered as a result of said assault and battery," and "engaged in  
25 a conspiracy to cover-up, conceal, and misrepresent" facts surrounding  
26 the alleged assault and battery and denial of medical attention. (Id.  
27 ¶¶ 26, 27.) Plaintiff alleges that as a result of the conspiracy,  
28 "Plaintiff suffered economic and non-economic damages." (Id. ¶ 29.)

1 Plaintiff's allegations state a claim for conspiracy; therefore, this  
2 portion of the motion is denied.

3 5. Violation of Constitutional and Civil Rights

4 The Supervisory Defendants also seek dismissal of  
5 Plaintiff's claims under 42 U.S.C. § 1983. Plaintiff alleges that  
6 "The wrongful acts, including the policy, custom and practice of the  
7 use of excessive force and abuse by defendants . . . , the assault and  
8 battery against plaintiff; the negligent supervision, hiring,  
9 training, discipline of [State and CYA] employees and operation of  
10 [the CYA] correctional facility; fraud; concealment; conspiracy; and  
11 deliberate disregard of medical care, all violated [Plaintiff's]  
12 constitutional rights to due process, equal protection, and freedom  
13 from unnecessary or excessive force. . . ." (Compl. ¶ 31.)

14 The Supervisory Defendants contend that Plaintiff's § 1983  
15 claims should be dismissed since "Plaintiff has failed to allege any  
16 facts showing that [the Supervisory Defendants] were in any way  
17 responsible for the alleged violation of Plaintiff's constitutional  
18 rights." (Defs.' Mot to Dismiss at 10-11.) However, Plaintiff argues  
19 his complaint alleges "not only an affirmative act in creating and  
20 enforcing a policy of excessive force but also allege a failure to  
21 act, i.e. to remedy the oppressive policy or custom of excessive  
22 force- to which they were deliberately indifferent." (Pl.'s Opp'n to  
23 Mot. Dismiss at 6.) Since the Supervisor Defendants could be liable  
24 "in [their] individual capacit[ies] for [their] own culpable action or  
25 inaction . . . , for [their] acquiescence in the constitutional  
26 deprivations of which the complaint is made, or for conduct that  
27 showed a reckless or callous indifference to the rights of others,"  
28



1 Plaintiff has sufficiently alleged a § 1983 claim and this portion of  
2 the Supervisory Defendants' motion is denied. Larez, 946 F.2d at 646.

3 Defendants also seek dismissal of Plaintiff's Fourteenth  
4 Amendment claims, arguing that "[i]nsofar as Plaintiff raises  
5 independent Eighth Amendment claims, such claims are inextricably  
6 linked to the Fourteenth Amendment claims" and "Plaintiff's Fourteenth  
7 Amendment claims are subsumed by the Eighth Amendment claims."

8 (Defs.' Mot. to Dismiss at 11.) "[T]he Due Process Clause [of the  
9 Fourteenth Amendment] affords [a prisoner] no greater protection than  
10 the Cruel and Unusual Punishment Clause [of the Eighth Amendment]."

11 Whitley v. Albers, 475 U.S. 312, 327 (1986). However, "An inmate who  
12 is injured as a result of a prison official's deliberate indifference  
13 to his safety may maintain a damage action for the deprivation of his  
14 civil rights under the [E]ighth and [F]ourteenth [A]mendments."

15 Stubbs v. Dudley, 849 F.2d 83, 85 (2d Cir. 1988) (citing Whitley, 475  
16 U.S. 312). Therefore, this portion of the motion is denied.

17 6. California Civil Code Section 52.1

18 The Supervisory Defendants contend Plaintiff's sixth claim  
19 under California Civil Code section 52.1 should be dismissed since  
20 "Plaintiff does not plead that [the Supervisory Defendants] personally  
21 threatened to physically abuse or harm Plaintiff or that they  
22 interfered with Plaintiff's civil rights by using threats or  
23 intimidation." (Defs.' Mot to Dismiss at 12.) But since this claim  
24 includes the allegation that Defendants "attempted to require and  
25 force [Plaintiff] to sign a 'contract' [and when Plaintiff] refused to  
26 sign said 'contract' . . . he was attacked and beaten by guards"  
27 (Compl. ¶ 7), this portion of the motion is denied.

1                    7. Negligence Per Se

2                    The Supervisory Defendants seek dismissal of Plaintiff's  
 3 claim for negligence per se because "Plaintiff has done no more than  
 4 simply state that [the Supervisory Defendants] have mandatory duties  
 5 under California laws and regulations, and that their actions breached  
 6 these duties." (Defs.' Mot. to Dismiss at 13.) Defendants argue that  
 7 "Plaintiff has failed to plead any causal connection between the  
 8 actions of Defendants and any violations of these laws." (Id.)  
 9 However, Plaintiff's allegations are sufficient to withstand this  
 10 motion; therefore, the motion is denied.

11                    8. Failure to Summon Medical Care

12                    The Supervisory Defendants also move to dismiss Plaintiff's  
 13 eighth claim for failure to summon medical care. The motion is denied  
 14 because Plaintiff's allegations are sufficient to state this claim.

15                    9. California Civil Code Section 51.7

16                    The Supervisory Defendants move to dismiss Plaintiff's ninth  
 17 claim for violation of California Civil Code section 51.7 because  
 18 "Plaintiff completely fails to allege that any of the Defendants were  
 19 motivated by gender or national origin animus." (Defs.' Mot. to  
 20 Dismiss at 15.) Under California Civil Code section 51.7(a): "All  
 21 persons . . . have the right to be free from any violence, or  
 22 intimidation by threat of violence, committed against their persons or  
 23 property because of their race, color, [or] national origin . . . ."  
 24 Cal. Civ. Code § 51.7(a). Plaintiff alleges Defendants "segregated  
 25 Wards into 'gangs'" and that segregation "included dividing Wards by  
 26 race." (Compl. ¶ 5.) Plaintiff further alleges Defendants "attempted  
 27 to require and force [Plaintiff] to sign a 'contract' admitting he was  
 28 a gang member and agreeing to desegregate [and] integrate the blocks

1 without violence.” (Id. ¶ 7.) However, since Plaintiff has failed to  
2 allege that the Supervisory Defendants were motivated by gender or  
3 national origin animus, this portion of the motion is granted.

4 CONCLUSION

5 The State and the CYA’s motion to dismiss Plaintiff’s third  
6 through seventh and ninth claims is granted; but their motion to  
7 dismiss Plaintiff’s eighth claim is denied. The Supervisory  
8 Defendants’ motion to dismiss Plaintiff’s first and ninth claims is  
9 granted; their motion to dismiss Plaintiff’s second claim is granted  
10 in part and denied in part; and their motion to dismiss Plaintiff’s  
11 remaining claims is denied.

12 IT IS SO ORDERED.

13 Dated: July 11, 2005

14  
15 /s/ Garland E. Burrell, Jr.  
16 GARLAND E. BURRELL, JR.  
United States District Judge  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28